United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

75-1402

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 75-1402

UNITED STATES OF AMERICA,

Appellee,

-v-

BARBARA HINTON, WILLIAM BECKWITH, CHARLES WILLIAM CAMERON, JAMES W. CARTER, JOHN DARBY, THELMA DARBY, DAVID BATES and SCARVEY McCARGO,

Appellants.

On Appeal From the United States District Court For the Eastern District of New York

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BRIEF FOR APPELLANT WILLIAM BECKWITH

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APPELLANT'S BRIEF

Preliminary statement

This is an appeal from a judgement of the United States District Court for the Eastern District of New York (Mischler, Ch. J.) entered December 5, 1975 which convicted the appellant of conspiracy to violate the narcotics laws (21 U.S.C. 846 & 963) and unlawful use of a telephone to facilitate the conspiracy (21 U.S.C. 843(b).

Appellant was sentenced to a term of from one to thirteen years imprisonment, a special parole term of ten years and a $25,000 fine and a concurrent prison term of four years on the telephone count. The appellant was remanded since he was already serving a prison term of from one to ten years in a Federal Penitentiary for a previous violation of a substantive count of the federal narcotic laws.

STATEMENT OF FACTS

INTRODUCTION

The appellant was charged with a conspiracy to import and distribute large quantities of heroin and cocaine. The indictment charged a continuing conspiracy between the appellant and the several other co-conspirators starting in September, 1968 and continuing up to the date the indictment was filed in January, 1975. According to the evidence introduced by the prosecution the alleged conspiracy begain in Atlantic City, N. J. in 1968 and the several conspirators met and conspired in various cities on the east coast with the center of operations being at various locations located in New York City.

The trial of this indictment took ten weeks and the record is voluminous, this Statement of Facts will attempt to summarize the evidence presented by the government against the appellant William Beckwith and the evidence which appellant relies on to establish his various points on appeal.

The government attempted to establish the beginning of the conspiracy with the testimony of an accomplice named Norman Lee Coleman. Coleman testified in essence that he first met Frank Matthews in Atlantic City together with an unindicted conspirator named Emerson Dorsey in the Summer of 1968 and that he dealt with the so called Matthew organization for a period of time in 1968 and 1969. It is significant to note that although the witness testified as to dealings with the Matthew organization he does not mention the appellant Beckwith as being a member of this organization or having any dealings with him involving narcotics.

The next witness that attempted to link the appellant with the Matthew organization and the conspiracy involved in this indictment was Dickie Diamond. Mr. Diamond who admitted being part of the Bynum drug empire and an admitted pimp, armed robber and convicted murderer who is presently serving a 21 year to life sentence in the State of New Jersey for

Conspiracy to commit murder, testified that he left the Bynum organization sometime in 1969 and started to buy drugs from Matthews. He testified that on two ocassions he purchased drugs from the appellant after having first paid Frank Matthews for the drugs and he testified as to have seen several alleged drug related transactions involving the appellant in a bar and grill named "Brownies" located on St. Marks Avenue in Brooklyn, N. Y. On cross examination the witness Diamond admitted to being a government informant since 1964 and at no time prior to his testimony in this case did he tell his supervising agent or the United States Attorney about his drug dealings with Frank Matthews or the appellant. In fact after he had been debriefed and prepared to tell his story to the Grand Jury that voted this indictment he did not tell the Grand Jury of all the transactions that he testified to during the trial. He admitted that he and his family had received large sums of support money from government funds and that he was testifying in the expectation of receiving executive clemency from the Governor of New Jersey or immediate parole.

Thomas Lee Morehead testified about his involvement with Gattis Hinton and his work at 925 Prospect Place, a cutting and bagging mill called "The Ponderosa". Mr. Morehead testified that he was a fugitive from the work gang in the state of North Carolina and he came to New York to look up his friend from Durham, Frank Matthews. He also testified that he was recruited to work in the mill by Gattis Hinton and that the appellant befriended him, lent him money to go to a doctor when he became addicted to heroin while bagging heroin. He also testified that the appellant gave him old clothes invited him by his home for dinner with his family and attempted to find legitimate employment for him. Most significantly he testified about an incident when a person was found dead in the bathroom of the apartment in The Ponderosa used as the mill and that he, the appellant, another indicted

conspirator, Donal Conner, was present together with some of the girls who worked in the mill. Mr. Morehead testified that the appellant Beckwith promptley called the Police. He then testified that Conner had him remove a quantitity of drugs and dilutants just before the Police arrived. This action of the appellant was hardly consistent with the government's contention that the appellant was a lietenant of Frank Matthews in charge of running the mill operation at that location.

Babe Cameron testified that he was a boyhood friend of Frank Matthews and began to deal with the Matthew organization and that a man named Pete Thorpe told him that the appellant was in charge of the mill on Prospect Place. The source of Thorpe's knowledge was not given. Cameron testified that on one occasion that he bought heroin from the appelant. The witness Cameron also testified that he was able to make contact with Frank Matthews in Durham by calling Matthew's aunt, Marzella Webb, who was also indicted but acquitted by the jury.

Donald James was another accomplice witness that testified as to extensive drug dealings with the Matthews organization. He testified to about 45 separate transactions with Matthews or Gattis Hinton with a total weight of about 100 to 150 kilograms of heroin. Mr. James acknowledged on the stand that he was a full partner in the "Dutch Schultz" organization, and that it was his function in that organization to make purchases of heroin, make payments for the purchases and to keep records and accounts of these transactions. The witness was arrested by the Narcotic Squad of the New York City Police Department and voluminous records and books of account were seized during the arrest reflecting drug deals between the Schultz organization and the Matthews organization for the period of the fall of 1970 to October 14, 1971, the date of his arrest. Nowhere in these records is there any account of any dealings with the appellant. The witness James stated that he went to school with Beckwith's wife and knew the appellant personally from the neighborhood

and yet he testified that he never had any drug dealings with the appellant.

The next group of witnesses for the government were various law enforcement officers who were members of the Task Force investigating Frank Matthews and his associates.

Detective Kowalski of the New York City Police Department lived in the same apartment building that Frank Matthews and Barbara Hinton, 130 Clarkson Avenue, Brooklyn, New York. In 1971 Detective Kowalski made dozens of observations of persons coming or going to the Matthews-Hinton apartment and he kept his superiors informed of his observations by filing written reports. On cross examination Detective Kowaski admitted that he had never filed a report showing that the appellant Beckwith was a visitor to the Matthews-Hinton apartment. It is fair to state that from the testimony of James, Cameron and Kowalski that 130 Clarkson Avenue was the hub of Frank Matthews operations until he moved in the summer of 1972. It is significant that none of these witnesses placed the appellant in or near these premises during this period.

The next witness of importance to mention the appellant was Walter Rosenbaum. His testimony was that the appellant was present when he discussed the deal to import the mannite from Italy to be used as a diltant for the heroin. The witness Rosenbaum testified as to extensive dealings with the Darbys, both legitimate and illegal but nowhere in his testimony does he mention the fact that the appellant was a party to any of those deals. Toll slips were introduced into evidence to show that the witness made several calls to a phone listed in the name of the appellant at 101 E. 56 St. but the witness did not testify to the fact that he spoke to the appellant Beckwith.

On September 15, 1972 officers of the Task Force executed a search warrant for the premises 101 E. 56 Street, a multiple dwelling owned by the appellant and his mother. A large quantity of contraband was found in the

first floor rear apartment. The appellant was indicted by a Federal Grand Jury for violating the substantive federal law of possessing Schedule I and Schedule II narcotic controlled substances with intent to distribute. This indictment was returned in the latter part of 1972. The appellant was tried on this indictment and convicted in The United States District Coudt for The Eastern District of New York in 1973 (Judd, J.)

The Appellant was sentenced to a term of 10 years imprisonment and a 5 year special parole term, which term he is presently serving. There is no testimony or evidence that indicates that the appellant participated in the last part of the conspiracy that extended from the time of his arrest until the date the indictment was filed in January, 1975.

The appellant entered no defense.

VERDICT

Appellant was found guilty on the conspiracy count (Count I) and on a "telephone count (Count 6).

SENTENCE

Appellant was sentenced to a term of imprisonment from one to thirteen years and to a term of 4years to be served concurrently with the term of 10 years the appellant received after conviction of violating the substantive narcotic laws in 1973 (Judd, J.) . In addition the appellant was fined $25,000. Appellant was remanded.

POINT I

At his arraignment on the indictment herein the appellant sought to interpose the doctrine of collateral estoppel as a bar to the prosecution of the indictment citing the Fifth Amenment prohibition against double jeopardy. The motion was denied by the trial Judge at that time with leave to renew at the close of the whole case if the appellant was convicted. After conviction and before sentencing the appellant again renewed his motion to dismiss the indictment, again invoking the principle of collateral estoppel. This motion was denied. The denial of this motion was reversible error.

It is well settled that the doctrine of collateral estoppel is applicable in criminal cases as well as civil matters. The doctrine of collateral estoppel is a basic and essential part of the Constitutional prohibition agains double jeopardy. The rule of collateral estoppel in criminal cases is not to be appleid with the hypertechnical and archaic approach of a 19th century pleading book but with realism and rationality. The inquiry must be set in a practical frame and viewed with an eye to all the circumstances of the proceedings. (Sealfon v. U.S. 332 U.S. 575,79; 68 S Ct 237, 240.) Viewing the proceedings against the appellant with the caveat of Sealfon v. U.S. in mind it is clear that the conviction of the appellant be set aside and the indictment dismissed.

The Federal Rules allow a prosecutor freedom to prosecute at one trial all the crimes arising out of a single criminal transaction. In order to avoid possible abuse of the criminal process a prosecutor will be prohibited from mounting successive prosecutions for offenses growing out of the same criminal episode, at least in the absence of a showing of unavodable necessity for successive prosections in the particular case.

Here there is no persuasive showing of unavoidable necessity. The sole purpose of indicting the appellant Beckwith on the conspiracy charge was to facilitate putting into evidence the mountain of physical

evidence seized at the "mill" located at 101 E. 56 St., Brooklyn, N. Y. an apartment building owned by the appellant. As previously noted this seizure took place on September 15, 1972. The appellant was indicted for this substantive crime on 1972 and was tried and convicted on 1973. The government might argue that the necessity for not prosecuting the appellant for the conspiracy charge in 1973 was that the government did not want to prematurely alert Frank Matthews the target of the investigation or that the government was not aware of the appellant's alleged participation in the conspiracy. The particular facts in this case does not support either of those views. The government indicted Frank Matthews and Miguel Garcia as defendants in a conspiracy that took place between April and September 1972 to distribute a quantity of narcotic controlled substances. This indictment was based on the testimony and cooperation of George Ramos who was named as a co-conspirator but not as a defendant. (73 Cr 100). The United States Attorney was aware of the conspiratorial acts of Frank Matthews prior to the trial of the appellant on his substantive charge. The cat was out of the bag as far as Frank Matthews was concerned. The government could have superceded the appellant's 1972 indictment to include the conspiracy charges contained in the indictment at issue (75 Cr 72). The appellant's alleged participation in the present conspiracy ceased with his arrest and indictment so the government could have continued its investigation into the Frank Matthews conspiracy without jeopardizing any case it might have had against other individuals. Accordingly, the facts that led to the indictment of the appellant on the indictment before this Court arose out of the same criminal transaction that led to his indictment and conviction in 1973; the government was aware of all of the facts and circumstances at the time of the appellant's first indictment and therefore the government should be estopped from trying the appellant on the instant indictment and the indictment should be dismissed.

POINT II

The indictment charges a single continuing conspiracy commencing in September 1968 and continuing until the filing of the indictment in January, 1975. It is the contention of the appellant that the evidence clearly showed the existence of multiple conspiracies involving various persons rather than the single conspiracy as charged in the indictment.

The core of the conspiracy charged or the one single thread that is common to all of the overt or criminal acts proved by the government is the indicted co-conspirator Frank Matthews.

The evidence is overwhelming that Frank Matthews and others were engaged in the illicit drug trade and the proof indicates that Frank Matthews conspired with others in order to facilitate the acquisition, distribution and sale of Schedule I and Schedule II narcotic drug controlled substances. However the evidence produced by the government at the rather lengthy trial does not prove beyond a reasonable doubt the existence of a single continuing conspiracy.

To best illustrate the appellant's contention that Frank Matthews was engagaged in multiple conspiracies involving many different people and groups take the Ramos testimony. The witness Ramos testified concerning his negotiations and dealings with Frank Matthews concerning the importation of cocaine from Venezuela. Also Officer Garay testified concerning trips taken to South America by Frank Matthews during the period he was negotiating with Ramos. It is the government's contention that these dealings with Ramos were in furtherance of the single continuing conspiracy

that began back in Atlantic City, N. J. in the summer of 1968. The action of the government itself tends to prove that Frank Matthews was engaged in a series of separate conspiracies rather than the one continuing conspiracy charged in the indictment. The Grand Jury that voted the instant indictment was empaneled in June of 1972 and sat for some 31 months before returning the instant indictment but in the interim a Grand Jury returned a separate indictment against Frank Matthews based on the Ramos testimony naming Matthews and Ramos' godfather Miguel Garcia as indicted co-conspirators. (73 Cr. 100).

The evidence clearly establishes that a series of separate conspiracies existed rather than the one continuing conspiracy as charged in the indictment, with such a variance between indictment and prcof the indictment must as a matter of law be dismissed.

POINT III

Pursuant to Federal Rules of Appellate Procedure (28) Appellant Beckwith hereby incorporates by reference any and all issues and arguments raised by his co-appellants insofar as they are applicable to him.

CONCLUSION

For the above stated reasons the judgement of conviction must be reversed or in the alternative there must be a remand for a new trial.

Respectfully submitted,

Dated: May 20, 1976

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